United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge CASE NUMBER		James B	3. Moran	Sitting Judge If Other than Assigned Judge			
		04 C	04 C 5312		DATE 9/23/		
CASE TRAD			DING TECHNOLOGIES INTERNATIONAL vs. Espeed, INC.				
MO	ΓΙΟΝ:	[In the following box (a) of the motion being pre-		e motion, e.g., plaintiff, defe	ndant, 3rd party plaintiff, and	(b) state briefly the nature	
		MEN	MORANDUM OF	INION AND ORD	PER		
DOC	KET ENTRY:						
(1)	☐ Filed	☐ Filed motion of [use listing in "Motion" box above.]					
(2)	☐ Brief	Brief in support of motion due					
(3)	☐ Answ	Answer brief to motion due Reply to answer brief due					
(4)	☐ Rulin	Ruling/Hearing on set for at					
(5)	☐ Statu	Status hearing[held/continued to] [set for/re-set for] on set for at					
(6)	☐ Pretri	Pretrial conference[held/continued to] [set for/re-set for] on set for at					
(7) .	☐ Trial	Trial[set for/re-set for] onat					
(8)	☐ [Bene	[Bench/Jury trial] [Hearing] held/continued to at					
(9)		This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).					
(10)	[Othe	[Other docket entry] Enter Memorandum Opinion And Order.					
(11)	[For	further detail see orde	r attached to the orig	inal minute order.]			
	No notices required,	advised in open court.				Document Number	
	No notices required.				number of notices	Number	
	Notices mailed by judge's staff.		{		SEP 2 4 2004		
1	Notified counsel by telephone. Docketing to mail notices.				date docketed	20	
	Mail AO 450 form.		nunne.		docketing deputy initials		
	Copy to judge/magistrate judge.		75197 - 75197				
courtroom		81:3	SOOP SEL 53 LH	date mailed notice			
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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

TRADING TECHNOLOGIES INTERNATIONAL, INC.,	}	
Plaintiff,		· .
vs.	No. 04 C 5312	DOCKETED
eSPEED, INC.)	SEP 2 4 2004
Defendant.))	

MEMORANDUM OPINION AND ORDER

The parties have advised the court that they agree (or virtually agree) on the terms of a protective order, with one significant exception: an attorney who is active for plaintiff in this litigation has also been involved in patent prosecutions for plaintiff in the past. Assuming that attorney, Steven F. Borsand, may be involved in patent prosecutions for plaintiff in the future, a not unreasonable assumption, defendant wants to deny him access to its highly confidential material or bar him for a period of time from prosecuting patents on plaintiff's behalf. We deny that restriction.

Both plaintiff and defendant have cases upon which they can rely. We think, however that the Federal Circuit presented the better argument in In re Sibia Neurosciences, Inc., 1997 U.S.App. LEXIS 31828. Mr. Borsand, so far as we know, is primarily a litigator. He has, in the past, become incidentally involved in patent applications by, for example, participating in interviews at the PTO, where the applicant is seeking to persuade the patent examiner of the strength of its position. He there acts as an advocate, not as a drafter of specifications and claims, and certainly not as one involved in his client's decisions regarding pricing, marketing,

product design or the like. We conclude that the risk of inadvertent misuse of confidential material is not great enough to justify the restrictions defendant proposes. And we have no reason to doubt that Mr. Borsand will conscientiously keep in mind and act to uphold his professional obligations.

JAMES B. MORAN

Sedior Judge, U. S. District Court

Sept. 23, 2004.